
ENGROSSED SUBSTITUTE SENATE BILL 5368

State of Washington

68th Legislature

2023 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Keiser, King, Conway, Schoesler, Randall, Torres, and C. Wilson)

READ FIRST TIME 02/08/23.

1 AN ACT Relating to establishing equitable access to the workers'
2 compensation stay-at-work program by allowing employers to offer off-
3 site light duty return to work opportunities to injured workers;
4 amending RCW 51.32.090; creating a new section; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The state established the stay-at-work
8 program to reduce long-term disability and the cost of injuries by
9 incentivizing employers to provide injured workers light duty and
10 transitional return-to-work opportunities. Data from the department
11 of labor and industries indicates that the program has lowered the
12 risk of long-term disability and can improve mental health and well-
13 being for workers who return to positions that allow for the time
14 necessary for healing and rehabilitation.

15 (2) However, current law only allows for light duty or
16 transitional return to work with the employer of injury, limiting
17 opportunities and creating inequities for workers and employers.
18 Small employers are less likely to have suitable light duty jobs.
19 Workers, particularly in small businesses, are less likely to have
20 access to remote light duty work. Injured workers who move out-of-
21 state are also less likely to have access to return-to-work

1 opportunities, especially when the employer of injury cannot offer
2 remote work options.

3 (3) The legislature hereby intends to provide more opportunities
4 for workers to access return to work and for employers to take
5 advantage of the stay-at-work program by allowing flexibility in
6 matching injured workers to temporary positions with local nonprofits
7 to perform light duty work. Workers eligible for the expanded program
8 pursuant to RCW 51.32.090(4)(m) will receive a written notice in
9 their preferred language that they have a right to reject a specific
10 light duty job with a specific nonprofit. This approach preserves all
11 protections for injured workers, reduces claim costs, transitions
12 workers back to productive work more quickly while allowing for
13 recuperation, and benefits local nonprofits by providing experienced
14 workers for important service roles.

15 **Sec. 2.** RCW 51.32.090 and 2023 c 171 s 7 are each amended to
16 read as follows:

17 (1) When the total disability is only temporary, the schedule of
18 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long
19 as the total disability continues.

20 (2) Any compensation payable under this section for children not
21 in the custody of the injured worker as of the date of injury shall
22 be payable only to such person as actually is providing the support
23 for such child or children pursuant to the order of a court of record
24 providing for support of such child or children.

25 (3)(a) As soon as recovery is so complete that the present
26 earning power of the worker, at any kind of work, is restored to that
27 existing at the time of the occurrence of the injury, the payments
28 shall cease. If and so long as the present earning power is only
29 partially restored, the payments shall:

30 (i) For claims for injuries that occurred before May 7, 1993,
31 continue in the proportion which the new earning power shall bear to
32 the old; or

33 (ii) For claims for injuries occurring on or after May 7, 1993,
34 equal eighty percent of the actual difference between the worker's
35 present wages and earning power at the time of injury, but: (A) The
36 total of these payments and the worker's present wages may not exceed
37 one hundred fifty percent of the average monthly wage in the state as
38 computed under RCW 51.08.018; (B) the payments may not exceed one
39 hundred percent of the entitlement as computed under subsection (1)

1 of this section; and (C) the payments may not be less than the worker
2 would have received if (a) (i) of this subsection had been applicable
3 to the worker's claim.

4 (b) No compensation shall be payable under this subsection (3)
5 unless the loss of earning power shall exceed five percent.

6 (c) The prior closure of the claim or the receipt of permanent
7 partial disability benefits shall not affect the rate at which loss
8 of earning power benefits are calculated upon reopening the claim.

9 (4) (a) The legislature finds that long-term disability and the
10 cost of injuries is significantly reduced when injured workers remain
11 at work following their injury. To encourage employers at the time of
12 injury to provide light duty or transitional work for their workers,
13 wage subsidies and other incentives are made available to employers
14 insured with the department.

15 (b) (i) Whenever the employer of injury requests that a worker who
16 is entitled to temporary total disability under this chapter be
17 certified by the attending provider as able to perform available work
18 other than his or her usual work, the employer shall furnish to the
19 attending provider, with a contemporaneous copy to the worker in
20 their preferred language, a ((statement describing the)) written job
21 description of the light duty or transitional work available with the
22 employer of injury, or with a nonprofit organization or charity
23 pursuant to (m) of this subsection, in terms that will enable the
24 attending provider to relate the activities of the job to the
25 worker's disability. The attending provider shall then determine
26 whether the worker is able to perform the work described. If more
27 than 21 calendar days have passed since the attending provider's last
28 appointment with the worker, the attending provider may meet with the
29 worker, if the attending provider deems necessary, to determine
30 whether the worker is able to perform the work. The attending
31 provider's determination must be shared with both the worker and
32 employer.

33 (ii) The worker shall accept or decline the light duty job offer
34 within seven days after receiving notification that the attending
35 provider has approved the job description. Failure to timely accept a
36 valid light duty job offer shall result in termination of temporary
37 total disability benefits except as described under (m) (v) of this
38 subsection.

39 (iii) The worker's temporary total disability payments shall
40 continue until the worker is released by ((his or her)) their

1 attending provider for the work, and begins the light duty work with
2 the employer of injury or with a nonprofit organization or charity
3 pursuant to (m) of this subsection. If the light duty or transitional
4 work thereafter comes to an end before the worker's recovery is
5 sufficient in the judgment of his or her attending provider to permit
6 him or her to return to his or her usual job, or to perform other
7 available work offered (~~(by the employer of injury)~~) pursuant to this
8 section, the worker's temporary total disability payments shall be
9 resumed. Should the (~~(available)~~) light duty work (~~(described)~~), once
10 undertaken by the worker, impede his or her recovery to the extent
11 that in the judgment of his or her attending provider he or she
12 should not continue to work, the worker's temporary total disability
13 payments shall be resumed when the worker ceases such work.

14 (c) To further encourage employers to maintain the employment of
15 their injured workers, an employer insured with the department and
16 that offers work to a worker pursuant to this subsection (4) shall be
17 eligible for reimbursement of the injured worker's wages for light
18 duty or transitional work equal to (~~(fifty)~~) 50 percent of the basic,
19 gross wages paid for that work, for a maximum of (~~(sixty-six)~~) 66
20 workdays within a consecutive (~~(twenty-four month)~~) 24-month period.
21 In no event may the wage subsidies paid to an employer on a claim
22 exceed (~~(ten thousand dollars)~~) \$10,000. Wage subsidies shall be
23 calculated using the worker's basic hourly wages or basic salary, and
24 no subsidy shall be paid for any other form of compensation or
25 payment to the worker such as tips, commissions, bonuses, board,
26 housing, fuel, health care, dental care, vision care, per diem,
27 reimbursements for work-related expenses, or any other payments. An
28 employer may not, under any circumstances, receive a wage subsidy for
29 a day in which the worker did not actually perform any work,
30 regardless of whether or not the employer paid the worker wages for
31 that day.

32 (d) If an employer insured with the department offers a worker
33 work pursuant to this subsection (4) and the worker must be provided
34 with training or instruction to be qualified to perform the offered
35 work, the employer shall be eligible for a reimbursement from the
36 department for any tuition, books, fees, and materials required for
37 that training or instruction, up to a maximum of (~~(one thousand~~
38 ~~dollars)~~) \$1,000. Reimbursing an employer for the costs of such
39 training or instruction does not constitute a determination by the

1 department that the worker is eligible for vocational services
2 authorized by RCW 51.32.095 and 51.32.099.

3 (e) If an employer insured with the department offers a worker
4 work pursuant to this subsection (4), and the employer provides the
5 worker with clothing that is necessary to allow the worker to perform
6 the offered work, the employer shall be eligible for reimbursement
7 for such clothing from the department, up to a maximum of (~~four~~
8 ~~hundred dollars~~) \$400. However, an employer shall not receive
9 reimbursement for any clothing it provided to the worker that it
10 normally provides to its workers. The clothing purchased for the
11 worker shall become the worker's property once the work comes to an
12 end.

13 (f) If an employer insured with the department offers a worker
14 work pursuant to this subsection (4) and the worker must be provided
15 with tools or equipment to perform the offered work, the employer
16 shall be eligible for a reimbursement from the department for such
17 tools and equipment and related costs as determined by department
18 rule, up to a maximum of (~~two thousand five hundred dollars~~)
19 \$2,500. An employer shall not be reimbursed for any tools or
20 equipment purchased prior to offering the work to the worker pursuant
21 to this subsection (4). An employer shall not be reimbursed for any
22 tools or equipment that it normally provides to its workers. The
23 tools and equipment shall be the property of the employer.

24 (g) An employer may offer work to a worker pursuant to this
25 subsection (4) more than once, but in no event may the employer
26 receive wage subsidies for more than (~~sixty-six~~) 66 days of work in
27 a consecutive (~~twenty-four month~~) 24-month period under one claim.
28 An employer may continue to offer work pursuant to this subsection
29 (4) after the worker has performed (~~sixty-six~~) 66 days of work, but
30 the employer shall not be eligible to receive wage subsidies for such
31 work.

32 (h) An employer shall not receive any wage subsidies or
33 reimbursement of any expenses pursuant to this subsection (4) unless
34 the employer has completed and submitted the reimbursement request on
35 forms developed by the department, along with all related information
36 required by department rules. No wage subsidy or reimbursement shall
37 be paid to an employer who fails to submit a form for such payment
38 within one year of the date the work was performed. In no event shall
39 an employer receive wage subsidy payments or reimbursements of any
40 expenses pursuant to this subsection (4) unless the worker's

1 attending provider has restricted him or her from performing his or
2 her usual work and the worker's attending provider has released him
3 or her to perform the work offered.

4 (i) Payments made under (b) through (g) of this subsection are
5 subject to penalties under RCW 51.32.240(5) in cases where the funds
6 were obtained through willful misrepresentation.

7 (j) Once the worker returns to work under the terms of this
8 subsection (4), (~~he or she~~) the worker shall not be assigned by the
9 employer to work other than the available work described (~~without~~
10 ~~the worker's written consent, or~~) without prior review and approval
11 by the worker's attending provider. An employer who directs a
12 claimant to perform work other than that approved by the attending
13 provider and without the approval of the worker's attending provider
14 shall not receive any wage subsidy or other reimbursements for such
15 work.

16 (k) If the worker returns to work under this subsection (4), any
17 employee health and welfare benefits that the worker was receiving at
18 the time of injury shall continue or be resumed at the level provided
19 at the time of injury. Such benefits shall not be continued or
20 resumed if to do so is inconsistent with the terms of the benefit
21 program, or with the terms of the collective bargaining agreement
22 currently in force.

23 (l) In the event of any dispute as to the validity of the work
24 offered or as to the worker's ability to perform the available work
25 offered by the employer, the department shall make the final
26 determination pursuant to an order that contains the notice required
27 by RCW 51.52.060 and that is subject to appeal subject to RCW
28 51.52.050.

29 (m) An employer with 100 or fewer employees may offer light duty
30 return to work to a worker pursuant to this subsection (4) with an
31 established nonprofit organization or charity pursuant to (n) of this
32 subsection, subject to the following parameters and conditions:

33 (i) The employer of injury may not disclose the worker's medical
34 restrictions with the nonprofit organization or charity without the
35 worker's written consent. If the worker does not consent to the
36 disclosure of their medical restrictions with the nonprofit
37 organization or charity, any approved light duty work must be with
38 the employer of injury;

39 (ii) The employer of injury remains accountable for all reporting
40 requirements;

1 (iii) The employer of injury remains responsible for any new
2 injury or occupational disease incurred while the worker is on light
3 duty return to work;

4 (iv) Offers made to a worker under this subsection (m) must
5 include a written notice in the worker's preferred language that they
6 have a right to reject a specific light duty job with a specific
7 nonprofit;

8 (v) The injured worker does not forfeit any protections or
9 benefits afforded to them under this title, and the injured worker
10 may reject a light duty return-to-work offer or otherwise terminate
11 the light duty return to work with the nonprofit organization or
12 charity, in which case the injured worker's temporary total
13 disability payments must continue or be resumed;

14 (vi) Except as otherwise provided under this subsection (4)(m),
15 the offer of light duty return to work with the nonprofit
16 organization or charity is subject to the same parameters and
17 conditions as an offer of available work with the employer of injury;

18 (vii) The employer of injury may be eligible for reimbursement
19 under (c) through (g) of this subsection if the department determines
20 the employer qualifies; and

21 (viii) The worker's experience gained through any light duty work
22 under this subsection (4)(m) with the nonprofit organization or
23 charity may not be construed as acquisition of transferable skills
24 and does not disqualify the injured worker from accessing vocational
25 rehabilitation services or other retraining programs available under
26 this title.

27 (n)(i) To offer light duty, transitional work with a nonprofit
28 organization or charity under (m) of this subsection, the employer of
29 injury must contract with a return-to-work employment agency approved
30 by the department or work with a nonprofit organization or charity
31 listed as active on a secretary of state website. The department must
32 develop the criteria in rule for a return-to-work employment agency
33 to receive department approval under this subsection.

34 (ii) The department must work with the vocational rehabilitation
35 advisory committee established in RCW 51.32.096 to research and
36 report on meaningful return-to-work outcomes and the benefits of
37 return to work on workers' mental health. The advisory committee must
38 also study the quality of the work and benefits to the worker of
39 transitional return to work with nonprofit organizations and make
40 recommendations for improving outcomes. The report must be submitted

1 to the workers' compensation advisory committee by October 31, 2029,
2 for consideration of additional legislation.

3 (5) An employer's experience rating shall not be affected by the
4 employer's request for or receipt of wage subsidies.

5 (6) The department shall create a Washington stay-at-work account
6 which shall be funded by assessments of employers insured through the
7 state fund for the costs of the payments authorized by subsection (4)
8 of this section and for the cost of creating a reserve for
9 anticipated liabilities. Employers may collect up to one-half the
10 fund assessment from workers.

11 (7) No worker shall receive compensation for or during the day on
12 which injury was received or the three days following the same,
13 unless his or her disability shall continue for a period of
14 (~~fourteen~~) 14 consecutive calendar days from date of injury:
15 PROVIDED, That attempts to return to work in the first (~~fourteen~~)
16 14 days following the injury shall not serve to break the continuity
17 of the period of disability if the disability continues (~~fourteen~~)
18 14 days after the injury occurs.

19 (8) Should a worker suffer a temporary total disability and
20 should his or her employer at the time of the injury continue to pay
21 him or her the wages which he or she was earning at the time of such
22 injury, such injured worker shall not receive any payment provided in
23 subsection (1) of this section during the period his or her employer
24 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
25 sick leave, or other similar benefits shall not be deemed to be
26 payments by the employer for the purposes of this subsection.

27 (9) In no event shall the monthly payments provided in this
28 section:

29 (a) Exceed the applicable percentage of the average monthly wage
30 in the state as computed under the provisions of RCW 51.08.018 as
31 follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

37 (b) For dates of injury or disease manifestation after July 1,
38 2008, be less than (~~fifteen~~) 15 percent of the average monthly wage

1 in the state as computed under RCW 51.08.018 plus an additional ((~~ten~~
2 ~~dollars~~)) \$10 per month if the worker is married and an additional
3 ((~~ten-dollars~~)) \$10 per month for each child of the worker up to a
4 maximum of five children. However, if the monthly payment computed
5 under this subsection (9)(b) is greater than ((~~one-hundred~~)) 100
6 percent of the wages of the worker as determined under RCW 51.08.178,
7 the monthly payment due to the worker shall be equal to the greater
8 of the monthly wages of the worker or the minimum benefit set forth
9 in this section on June 30, 2008.

10 (10) If the supervisor of industrial insurance determines that
11 the worker is voluntarily retired and is no longer attached to the
12 workforce, benefits shall not be paid under this section.

13 (11) The department shall adopt rules as necessary to implement
14 this section.

15 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2026.

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